

**PT 01-57**

**Tax Type: Property Tax**

**Issue: Educational Ownership/Use**

**STATE OF ILLINOIS  
DEPARTMENT OF REVENUE  
OFFICE OF ADMINISTRATIVE HEARINGS  
CHICAGO, ILLINOIS**

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**NORTH PARK  
UNIVERSITY,  
APPLICANT**

**v.**

**ILLINOIS DEPARTMENT  
OF REVENUE**

**No. 00-PT-0006  
(98-16-0737)  
(99-16-0674)**

**P.I.N.S: 13-12-302-001  
(98-16-0737)  
13-11-404-034  
(99-16-0674)**

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**RECOMMENDATION FOR DISPOSITION  
PURSUANT TO APPLICANT'S MOTION FOR SUMMARY JUDGMENT**

**APPEARANCES:** Mr. David G. Erickson of Erickson, Papanek, Hanson & Peterson on behalf of North Park University.

**SYNOPSIS:** These consolidated matters arise pursuant to separate motions for summary judgment. The applicant in these matters, North Park University (hereinafter "NPU" or the "applicant") filed these motions after the Illinois Department Of Revenue (hereinafter the "Department") issued two separate determinations finding that the properties for which NPU sought real estate tax exemptions did not qualify for same under Section 15-35(b) of the Property Tax Code, 35 ILCS 200\1-1 *et seq.* The underlying controversies arises as follows:

A. Case No. 98-16-0737

NPU filed a Property Tax Exemption Complaint with the Cook County Board of Review (hereinafter the "Board") on June 16, 1999. Said complaint sought to exempt real estate identified by Cook County Parcel Index Number 13-12-302-001 from 1998 real estate taxes under Section 15-35(b) Property Tax Code, 35 **ILCS** 200/1-1 *et seq.* The Board reviewed NPU's complaint and recommended to the Department that the property be exempt as of February 25, 1998. The Department however rejected the Board's recommendation by means of a determination dated November 24, 1999. Said determination found that the property NPU was seeking to exempt was not in exempt use. NPU filed an appeal to this determination and later filed this motion for summary judgment. Following a careful review of that motion and its supporting document, I recommend that the Department's initial determination in Docket No. 98-16-0737 be modified to reflect that the subject property be exempt for 73% of the 1998 assessment year.

B. Docket No. 99-16-0674

NPU filed a Property Tax Exemption Complaint with the Cook County Board of Review (hereinafter the "Board") on December 13, 1999. Said complaint sought to exempt real estate identified by Cook County Parcel Index Number 13-11-404-034 from 1999 real estate taxes under Section 15-35 Property Tax Code, 35 **ILCS** 200/1-1 *et seq.* The Board reviewed NPU's complaint and recommended to the Department that the property be exempt as of January 4, 1999. The Department however rejected the Board's recommendation by means of a determination dated June 8, 2000. Said determination found that the property NPU was seeking to exempt was not in exempt use during 1999. NPU filed an appeal to this determination and later filed this motion for summary

judgment. Following a careful review of that motion and its supporting document, I recommend that the Department's initial determination in Docket No. 99-16-0674 be affirmed.

**FINDINGS OF FACT:**

A. Case No. 98-16-0737

1. The Department's jurisdiction over this case and its position therein are established by the determination in this matter, issued by the Office of Local Government Services on November 24, 1999. Administrative Notice.
2. The Department's position in this case is that the subject property, which is situated on real estate identified by Cook County Parcel Index Number 13-12-302-001 is not in exempt use. Administrative Notice.
3. The Application for Property Tax Exemption, received by the Department on July 12, 1999, indicates that: (a) the subject property is located at 5101-17 N. Kedzie, Chicago, IL; and, (b) was unimproved throughout 1998.
4. Applicant, a duly accredited liberal arts university, obtained ownership of the subject property by means of a trustee's deed dated February 20, 1998. Applicant Motion Ex. B.
5. Applicant purchased the subject property in order to expand the student and faculty parking facilities for its main campus, which is located on the north side of Chicago. Applicant Motion Ex. A.
6. Environmental tests performed prior to the date of purchase disclosed that applicant might be required to remove certain soil-level pollutants from the subject property prior to proceeding with the planned expansion of its parking facilities. *Id.*

7. Applicant engaged Huff and Huff, an environmental consulting firm, to perform soil contamination tests on the subject property. Huff and Huff performed these tests on April 9, 1998 and discovered unacceptable levels of benzene-gasoline and vinyl chloride contamination. *Id*; Applicant Motion Ex. A, D.
8. The Illinois Environmental Protection Agency (hereinafter the “IEPA”) would not permit applicant to proceed with further construction on the subject property unless and until NPU presented it with satisfactory evidence that the hazardous materials had been safely removed. Applicant Motion Exs. A, H, L, Q, T;
9. Applicant commenced necessary removal efforts on July 7, 1998 and continued with same throughout the remainder of the 1998 assessment year. It carried these efforts forward into 1999, removed the underlying source of the contamination, a leaking underground storage tank, in October of 1999 and obtained necessary IEPA approvals in November of 1999. Applicant Motion Ex. A, Q, T.
10. Applicant then obtained necessary construction permits from the City of Chicago and proceeded with the remaining phases of modifying its existing campus facilities to accommodate the additional parking facilities throughout the remainder of 1999 and into 2000. Applicant Ex. A.

B. Case No. 99-16-0674

1. The Department’s jurisdiction over this case and its position therein are established by the determination in this matter, issued by the Office of Local Government Services on June 8, 2000. Administrative Notice.

2. The Department's position in this case is that the subject property, which is situated on real estate identified by Cook County Parcel Index Number 13-11-404-034, was not in exempt use during 1999. Administrative Notice.
3. The Application for Property Tax Exemption, received by the Department on March 31, 2000 indicates that the subject property: (a) is located at 5112 N. Christiana, Chicago, IL; and, (b) was mostly unimproved throughout 1999. Administrative Notice.
4. Applicant obtained ownership of the subject property by means of a warranty deed dated January 4, 2001. Applicant Motion Ex. G.
5. Applicant acquired ownership of the subject property for the purpose of constructing a library thereon. This library was to be part of a larger overall plan for expanding applicant's overall campus facilities. Applicant Motion Ex. A.
6. The City of Chicago (hereinafter the "City") required that applicant: (a) attain certain zoning approvals; (b) obtain approval for a plan to vacate certain portions of Christiana Avenue; and, (c) enter into, and have the City approve, an agreement for the sale of the land to be vacated, before proceeding with construction. *Id*;
7. Applicant was also required to develop cross easements for utilities, prepare all necessary engineering and architectural plans and demolish existing structures prior to proceeding. *Id*;
8. Applicant's timetable for completing the above requirements was as follows:

DATE	EVENT
June, 1998	Applicant hires a law firm to represent it in connection with zoning and land vacation requirements.

September 9, 1998	Applicant submits its original zoning ordinance amendment to the City and pays the requisite fee of 5,750.00.

<b>DATE (CONT'D.)</b>	<b>EVENT</b>
November, 1998	Applicant's development consultant submits a required development evaluation report to the City.
December 16, 1998	Proposed amendment to original application introduced.
January 11, 1999	Another proposed amendment to original application introduced.
February 11, 1999	Applicant submits amended zoning ordinance to the City.
March, 1999	City approves applicant's planned development.
April, 1999 – September, 1999	Applicant works with the City, architects, surveyors and contractors to develop water and main easements across the existing University property for vacation of the necessary portion of Christiana Ave.
September 29, 1999	City approves the ordinance mandating that necessary portion of Christiana Ave. be vacated.
September, 1999 – January, 2000	Attorneys for applicant and the City negotiate and draft an agreement for the sale and development of land falling within the portion of Christiana Ave to be vacated.
October 7, 1999	Applicant finalizes and enters into a contract for construction of the library.

<b>DATE (CONT'D.)</b>	<b>EVENT</b>
January 5, 2000 – January 15, 2000	Applicant conducts demolition of certain structures located on the vacated portion of Christiana Ave., including a two-flat building situated on the subject property.
February 3, 2000	City of Chicago grants approval to the agreement for sale and redevelopment of land along the vacated portion of Christiana.
March, 2000	Applicant begins excavation for the library.

Applicant Motion Exs. A, C, D, E, F, H, I, J, K, L.

9. Applicant expects that construction of the new library will be completed in August of 2001. Applicant Motion Ex. A.

**CONCLUSIONS OF LAW:**

Summary judgment is appropriate where there are no genuine issues of material fact and the moving party is entitled to judgment as a matter of law. 735 ILCS 5/2-1005(c). There are no genuine issues of material fact in these consolidated cases. Therefore, the issues for decision herein necessarily become ones of law. Evangelical Alliance Mission v. Department of Revenue, 164 Ill. App.3d 431, 439 (2<sup>nd</sup> Dist. 1987). Those issues are, precisely stated, whether the series of steps applicant took during the tax years in question constituted the type of adaptation and development of real estate which Illinois law recognizes as exempt use.

Article IX, Section 6 of the Illinois Constitution of 1970 provides as follows:

The General Assembly by law may exempt from taxation only the property of the State, units of local government and school districts and property used exclusively for agricultural and horticultural societies, and for school, religious, cemetery and charitable purposes.

Pursuant to Constitutional authority, the General Assembly enacted Section 15-35(b) of the Property Tax Code, wherein “property of schools on which the schools are located and any other property of schools used by the schools exclusively for school purposes” is exempted from real estate taxation. 35 ILCS 200/15-35(b). The statutory requirements for this exemption are: (1) exempt ownership, which means that the property must be owned by a duly qualified “school”<sup>1</sup> (Wheaton College v. Department of Revenue, 155 Ill. App.3d 945 (2<sup>nd</sup> Dist. 1987)); and, (2) exempt use, which means that the property must be “exclusively” or primarily used for “school”-related purposes. (People ex rel. Goodman v. University of Illinois Foundation, 388 Ill. 363 (1944)). Only the latter requirement is at issue herein, as both of the instant denials were based solely on lack of exempt use.

The adaptation and development of real estate for school or other exempt purposes can constitute exempt use in some circumstances. *Compare*, Antioch Missionary Baptist Church v. Rosewell, 119 Ill. App.3d 981 (1st Dist. 1983) (church property that was intended for religious use but completely vacant throughout the tax year in question held non-exempt) *with* People ex rel. Pearsall v. Catholic Bishop of Chicago 311 Ill. 11 (1924) (all portions of seminary property being actively developed for seminary-related purposes, except one tract which lie fallow throughout relevant tax

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1. The legal definition of the term “school” is, for property tax purposes, as follows:

A school, within the meaning of the Constitutional provision, is a place where systematic instruction in useful branches is given by methods common to schools and institutions of learning, which would make the place a school in the common acceptance [sic] of the word.

People ex rel. McCullough v. Deutsche Evangelisch Lutherisch Jehova Gemeinde Ungeanderter Augsburgischer Confession, 249 Ill. 132, 137 (1911).



year, held exempt); Weslin Properties v. Department of Revenue, 157 Ill. App. 3d 580 (2nd Dist. 1987) (part of medical facility that was under active construction during tax year in question held exempt).

Both these cases present situations wherein applicant clearly intended to adapt and develop the subject properties for “school” related purposes during the tax years in question. Nonetheless, applicant’s actual, rather than intended uses, are determinative on the question of exempt use. Skil Corporation v. Korzen, 32 Ill.2d 249 (1965); Comprehensive Training and Development Corporation v. County of Jackson, 261 Ill. App.3d 37 (5th Dist. 1994). This is especially true where, as here, applicant was required to demonstrate conformity with applicable legal restrictions before proceeding with construction.

In Case No. 98-PT-0737, those restrictions were imposed by the Illinois Environmental Protection Agency and required that applicant remove certain pollutants from the subject property. Applicant began the process of actually removing such pollutants from said property on April 9, 1998, when it had soil tests performed thereon. NPU then proceeded on an aggressive plan to physically remove pollutants from the subject property throughout the balance of the 1998 assessment year. Accordingly, I recommend that the Department’s determination in Case No. 98-PT-0737 be modified to reflect that real estate identified by Cook County Parcel Index Number 13-12-302-001 be exempt for that 73% of the 1998 assessment year which occurred on or after April 9, 1998.

The legal restrictions in Case No. 99-16-0674 were imposed by the City of Chicago and required that NPU: (a) attain certain zoning approvals; (b) obtain approval

for a plan to vacate certain portions of Christiana Avenue; and, (c) enter into, and have the City approve, an agreement for the sale of the land to be vacated. Applicant cleared the first two constraints on September 29, 1999, when the City passed the ordinance requiring that the necessary portions of Christiana Avenue be vacated. It did not, however, clear the third constraint until the City approved the necessary agreement on February 3, 2000. For this reason, it was legally impossible for applicant to undertake any actual adaptation and development of the subject property throughout 1999. Therefore, whatever steps applicant took to bring its library construction plans into fruition during 1999 remained but intended uses.

Such uses are legally insufficient to establish that the subject property was actually used for exempt purposes during the tax year currently in question. Skil Corporation v. Korzen, *supra*; Comprehensive Training and Development Corporation v. County of Jackson, *supra*. As consequence thereof, NPU is not entitled to judgment as a matter of law in Case No. 99-16-0674. Therefore, the Department's initial determination in that case, finding that real estate identified by Cook County Parcel Index Number 13-11-404-034 was not in exempt throughout the 1999 assessment year, should be affirmed.

**WHEREFORE**, for the reasons set forth above, I recommend that:

- A. Real estate identified by Cook County Parcel Index Number 13-12-302-001 be exempt from real estate taxes for 73% of the 1998 real estate taxes under Section 15-35(b) of the Property Tax Code, 35 ILCS 200/1-1, *et seq.*

- B. Real estate identified by Cook County Parcel Index Number 13-11-404-034 not be exempt from 1999 real estate taxes under Section 15-35(b) of the Property Tax Code, 35 **ILCS** 200/1-1, *et seq.*

September 17, 2001

Date

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Alan I. Marcus  
Administrative Law Judge